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OFFICE OF PETITIONS

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| In re Application of | : | |
| James Stockman | : | LETTER REGARDING |
| Application No. 09/615,683 | : | PATENT TERM ADJUSTMENT |
| Filed: July 14, 2000 | : | |
| Attorney Docket No. 4554/87215 | : | |

This letter is in response to the "PATENT TERM ADJUSTMENT CHANGE REQUEST," filed July 1, 2004. Therein, applicant attempted to notify the Office of an error in applicant's favor in the initial determination of patent term adjustment. Applicant states that the patent term adjustment for this case should be "562" days, not "565" days (using a commercial software program).

The request for correction of the initial determination of patent term adjustment (PTA) is **DISMISSED**. However, for the reasons set forth herein, correction of the initial determination is required.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred sixty-seven (**367**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 15, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 565 days. Applicant submits no basis for their assertion that the PTA should be 562 days.

A review of the record reveals no basis for a change of the initial determination of patent term adjustment from 565 days to

562 days. Pursuant to 35 U.S.C. 154(b)(1)C(iii) and 37 CFR 1.702(e), a patent is entitled to patent term adjustment if the issuance of the patent was delayed by successful appellate review under 35 U.S.C. 134, 141 or 145. 37 CFR 1.703(e) provides that the period of adjustment under § 1.702(e) is the sum of:

the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 1.191 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

A review of the record confirms that a notice of appeal was filed on May 14, 2002. A final decision by the Board of Patent Appeals and Interferences, reversing all grounds for rejection of at least one claim was issued on January 30, 2004. Accordingly, the period of adjustment delay caused by successful appellate review is 626 days (e.g., beginning on May 14, 2002, and ending on January 30, 2004).

Moreover, pursuant to § 1.704(b), the period of adjustment was reduced by 61 days. The Office did not receive a response to the non-final Office action mailed June 27, 2001, until November 27, 2001, three months and 61 days later. Accordingly, the determination accompanying the notice of allowance indicated a patent term adjustment of 565 days (626 - 61).

However, upon further review of the record, an additional basis for reduction of the patent term adjustment is revealed. 37 CFR § 1.704(c)(7) provides that:

Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

In this instance, a defective appeal brief was filed on September 16, 2002. See Notice of Defective Appeal Brief mailed December 3, 2002. An appeal brief correcting the defect was not filed until April 2, 2003. Thus, the period of reduction

pursuant to § 1.704(c)(7) is 198 days, beginning on the day after the date the reply having an omission was filed, September 17, 2002, and ending on the date that the reply correcting the omission was filed, April 2, 2003.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred sixty-seven (367) days ($626 - (61 + 198)$).

Applicant is advised that any additional period of adjustment for Office delay pursuant to 1.703(a)(6) will be reflected in the PTA shown in the Issue Notification letter (and in the patent).

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicant for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Patent Publication for issuance of the application.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read 'Karin Ferriter' with a stylized flourish below it.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of REVISED PAIR screen